

**PT 01-68**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**TRINITY LUTHERAN CHURCH  
OF ROLLING MEADOWS,  
APPLICANT**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**No. 01 PT 0036**

**Real Estate Exemption**

**For 1999 Tax Year  
P.I.N. 02-36-105-048**

**Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Donald T. Rubin, on behalf of Trinity Lutheran Church of Rolling Meadows; Mr. George Foster of behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:**

This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 02-36-105-048 (hereinafter the “subject property”) qualifies for exemption from 1999 real estate taxes under 35 ILCS 200/15-40, wherein “[a]ll property used exclusively for religious purposes” is exempted from real estate taxation. The subject property consists of a church and the Children’s Meadow Day Care Center.

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The controversy arises as follows: On May 9, 2000, Trinity Lutheran Church of Rolling Meadows (hereinafter the “applicant” or “Trinity”) filed an Application for Property Tax Exemption for tax year 1999 with the Cook County Board of Appeals (hereinafter the “Board”). Dept. Ex. No. 1. The Board reviewed the application and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the applicant be granted a full year exemption for 1999. The Department rejected the Board’s recommendation in a determination dated March 15, 2001, finding that the Applicant had failed to respond to “repeated requests for additional information regarding the application.” Dept. Ex. No. 1. On March 29, 2001, Trinity filed a timely request for a hearing as to the denial.

On August 9, 2001, Trinity presented evidence at a formal hearing with Pastor Robert J. Giese and Mr. Randall Steven Granucci, president of Children’s Meadow Day Care Center (hereinafter “Children’s”), testifying. At the hearing, the Department conceded that “the Applicant has established through the evidence put forth today that Applicant is entitled to a tax exemption for that portion of the church, other than what’s used for the day-care center.” Tr. p. 83. Accordingly, the only remaining issue in the case is whether Children’s is entitled to a property tax exemption. Following submission of all evidence and a careful review of the record, it is recommended that the subject property, excluding the portion of the property used by Children’s, be granted an exemption from real estate taxes for the 1999 tax year.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the property was not in exempt use in 1999. Tr. pp. 23-24; Dept Ex. No. 1.
2. The subject property, located at 3211 Meadow Drive in Rolling Meadows, was transferred on June 18, 1963 by quit claim deed from the Northern Illinois District of the Lutheran Church, Missouri Synod, to the Trinity Lutheran Church of Rolling Meadows. Tr. pp. 12, 19, 27; Applicant's Ex. A.
3. The subject property was 100% exempt from real estate taxes from 1979 until March 14, 1997. In 1997, approximately 1 acre of the property was sold to a non-exempt purchaser, Kimball Builders. As a result of the sale, Cook County voided the tax exemption on the entire parcel for tax year 1998, although the unsold portion was still owned, operated and used by Trinity. Tr. pp. 14-15, 20, 28; Applicant's Ex. J.
4. Delinquent real estate taxes on the subject property were offered and sold at an annual tax sale for non-payment of 1998 taxes. In Cook County case number 00 L 50824, Judge Alexander P. White vacated the sale of the 1998 taxes as a sale in error finding that the subject property, excluding the portion sold to the non-exempt purchaser, "was utilized exclusively for religious purposes [and] was 100% exempt from real estate taxes for the year 1998." Tr. pp. 14-15; Applicant's Ex. J.
5. Trinity was incorporated as a religious corporation on September 6, 1955. Tr. p. 12; Applicant's Ex. B.
6. Trinity operates under a Constitution and set of Bylaws, adopted December 6, 1987. Tr. p. 12; Applicant's Ex. C.

7. Trinity is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code and is exempt from sales and use tax in Illinois. Tr. pp. 12-13; Applicant's Ex. D and E.
8. At the end of 1998, Trinity had 366 baptized members. Approximately 300 people use the facilities in every week. Tr. pp. 14, 29, 39; Applicant's Ex. H.
9. In addition to use by Children's, the subject property is used for two Sunday morning church services and Sunday School, weekly choir practice, confirmation classes, and Bible studies. Tr. pp. 14, 29; Applicant's Ex. I and P.
10. The church building contains 8,656 square feet on the main floor and the same square footage in the basement. Children's occupies 2,556 square feet in the basement, or 14.8% of the building. Children's also has an outside playground area of 2,756 square feet, which is 1.8% of the total site area of 152,277 square feet. Tr. pp. 15, 20, 41-42; Applicant's Ex. K.
11. Approximately 50% of the upper level floor consists of sanctuary space, used for worship. The upper level also contains a lounge, a youth room, and two meeting rooms. The lower level contains a fellowship hall, a kitchen, storage space, a food pantry and a lending locker, and Children's. Tr. pp. 32-38; Applicant's Ex. L and N.
12. Children's opened on the subject property in 1979 and was incorporated as a not-for-profit corporation on June 7, 1991, for the purpose of "... rendering of affordable day care and educational services to aid working mothers, enable mothers to re-enter the workplace and allow underprivileged youths the opportunity to receive quality low cost day care and educational services." Tr. pp. 16, 40, 56-57; Applicant's Ex. N.

13. Since 1979, Children's has paid Trinity \$660/month for electric, gas and water expenses. Trinity does not have a lease with Children's. Tr. pp. 43-44.
14. Children's is licensed by the Department of Children and Family Services ("DCFS") to accept up to 42 children. Currently there are 36 children in the program. Tr. p. 51.
15. Day Care Action Council, a screening agency for the Department of Human Services ("DHS"), recommends children to the day care center. Children's has never refused a referral from DHS. Tr. pp. 51-52.
16. Children's operates from 7:00 a.m. to 6:00 p.m. and is open 52 weeks per year. Lessons in crafts, skills or the alphabet begin at 9:00 a.m. A hot lunch is then served followed by a nap period. Afternoon activities may be conducted in the playground, depending on the weather. Tr. pp. 52-53, 70.
17. In 1999, Children's charged \$122/week for one child in the program and \$235/week for two children. Charges are higher for children who are not toilet-trained and there is an additional charge for before or after school care. Children can also attend for 2, 3 or 4 days per week, at reduced charges. Tr. pp. 54-55; Applicant's Ex. N.
18. In 1999, Children's had three paid employees, including Mr. Granucci and his wife. Employees are required to have two years of college courses in early childhood development and six credit hours of related courses. Employees must be trained in CPR and first aid and undergo background checks. Tr. pp. 59-60.
19. The 1999 Schedule C, "Profit or Loss From Business," for Children's shows Wages Expense of \$36,283 (paid to one full time employee), Rent or Lease Expense of \$7,920 (\$660 per month paid to Trinity) and Net Profit of \$110,973. The net profit was distributed equally to Mr. Granucci and his wife, who worked approximately 55

and 50 hours per week, respectively, at Children's. Mr. Granucci teaches and provides maintenance services. Mrs. Granucci teaches, cleans and cooks. Tr. pp. 60-61, 65; Applicant's Ex. N.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that Trinity has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property, excluding that portion used by Children's Meadow Day Care Center, for 100% of the 1999 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may

place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” 35 ILCS 200/15-40 (1996). The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter “McCullough”).

Trinity is a member of the Evangelical Lutheran Church of America, Metropolitan Chicago Synod. Tr. p. 48. The subject property was transferred to Trinity by quit claim deed on June 18, 1963. Applicant’s Ex. A. At the hearing on August 9, 2001, the Department conceded that Trinity was entitled to a property tax exemption for tax year 1999 for all of the subject property, excluding the area used by Children’s Meadow Day Care Center. Tr. p. 83. Accordingly, the only real issue to be determined is whether the area occupied by Children’s is entitled to an exemption.

Based on the Supreme Court’s definition of “religious use” in McCullough, I am unable to conclude that Trinity’s rental to Children’s furthers any religious purpose of Trinity’s. “Religious purpose” includes the use of property for public worship, Sunday school, and religious instruction. There was no testimony or evidence presented at the hearing that any type of religious instruction was provided to children at the day care

center. Counsel for Trinity stated in closing argument that allowing Children's to use the property was "really meant to continue the religious basis of the Lutheran church to help the community provide a service that would otherwise not be available." Tr. p. 79. While providing service to the community is obviously a worthy endeavor, it is not, in itself, a basis for property tax exemption.

Since 1979, Children's has paid Trinity \$660/month for electric, gas and water expenses. Tr. pp. 43-44. In its 1999, "Statement of Revenue, Expenses, and Comparisons to Budget," Trinity accounted for the payments from Children's as "Donations-Organizations." Applicant's Ex. F. On the other hand, Children's accounts for the payments as "Rent or Lease Expense-Other Business Property" on its Schedule C, "Profit or Loss from Business." Applicant's Ex. N. Pastor Giese testified that the \$660/month figure was arrived at in 1979 because it "was thought to be a fair amount to cover the utilities and other expenses that were incurred at -- by the use of the church by the day-care center." Tr. p. 43.

Trinity's "Statement of Revenue, Expenses, and Comparisons to Budget" shows the following expenses, *inter alia*, for 1999: Gas-Church \$5,556; Electric-Church \$7,896; Water-Church \$831. The total of these expenses for 1999 is \$14,283. Children's occupies 14.8% of the square footage of Trinity and, accordingly, their proportionate share of the utilities' expense, 14.8% of \$14,283, would be \$2,113. In 1999, Children's paid Trinity \$7,920 (\$660 for 12 months). Applicant's Ex. N. These figures indicate that Trinity rents to Children's at a profit of approximately \$5,807 (\$7,920 less \$2,113) per year.



Counsel for Trinity stated in opening argument that contributions made by Children's to Trinity were "incidental to the primary and principal use of the property." Tr. p. 23. Trinity has allowed Children's to use the property at the same yearly rate of \$7,920 since 1979. It seems fair to assume that utilities have increased over this 20-year period, and that Trinity's \$5,000 profit on the rental in 1999 is low in comparison with profits earned in the previous 20 years. Based on these figures, and the 20 year relationship between Trinity and Children's, I must conclude that Trinity allows Children's to use the space with a view toward profit and that the profit is not incidental to Trinity's operations.

Children's was incorporated as a non-for-profit corporation on June 7, 1991. Applicant's Ex. N. However, based on the evidence and testimony presented at the hearing, I am unable to conclude that Children's is, in fact, a not-for profit corporation. In 1999, Children's filed a Schedule C, "Profit or Loss from Business" for a sole proprietorship. The Schedule C shows a profit of \$110,973 which, according to the testimony was divided evenly between Mr. Granucci and his wife, or approximately \$55,000 for each. Tr. p. 60. The Schedule C also shows that one employee of Children's was paid \$36,283 in wages for 1999. Applicant's Ex. N.

There was no testimony at the hearing as to average salaries in the day care industry, but since one employee of Children's was paid \$36,000, this would appear to be a good indication of an average salary. Mr. Granucci testified that he and his wife worked approximately 55 and 50 hours per week, respectively, at Children's. The Department's counsel pointed out in his closing argument that for many small businesses, "the owner/operator is required to work at the business every day," and this does not

make the business not-for-profit. One of the characteristics of a charitable institution is that it does not provide profit in a private sense to any person connected with it. Methodist's Old People's Home v. Korzen, 39 Ill. 2d 149 (1968). (hereinafter "Korzen"). I am unable to characterize Children's as a charitable organization based on the profit of \$110,973 earned in 1999 and the distribution of this profit to its owners.

In 1999, Children's charged \$122/week for one child in the program. Tr. p. 55. Testimony at the evidentiary hearing indicated that Children's charges were significantly less than other day care centers in the area. Mr. Granucci testified that "there are a lot of daycares in the Northwest suburbs. The problem is there's not a lot of affordable daycare." Tr. p. 55. There was testimony at the hearing that charges were sometimes waived for children in the program:

There are people who want to pay, who are really in a bind. We have many parents whose fathers of the children run off and pay no child support to the mothers, and, you know, they have two kids. It's tough and we realize this and we do what we can to help them. Tr. p. 56.

Mr. Granucci also testified that "there have been quite a few times where we've had to waive charges for people." Tr. p. 56. No dollar figures were given for the waived charges.

Based on the information presented at the evidentiary hearing, I am unable to conclude that Children's provides assistance to all who need and apply for it, another characteristic of a charitable organization, according to Korzen. Children's is licensed by DCFS. The Day Care Action Council, an affiliate of DHS, recommends children to the program. Tr. p. 52. Mr. Granucci stated that Children's has never refused a referral from

DHS. Tr. p. 52. There was no testimony or evidence, however, that Children's was required to take referrals from either DHS or DCFS.

The referrals from the Day Care Action Council, in effect, provide Children's with a ready-made market for their services. Although Children's may be charging less than other day care centers in the area, they charged a sufficient amount to earn a profit of \$110,973 in 1999. The evidence indicates that Children's made a business decision to appeal to a low cost market for day care services, while still earning a substantial profit. This does not make Children's a charitable institution.

In closing argument, counsel for Trinity compared Children's use of the property to the situation in Children's Development Center, Inc. v. Olson, Township Assessor, 52 Ill. 2d 332 (1972), where the School Sisters of St. Francis, a religious order, rented a portion of their convent to Children's Development Center, a not-for profit corporation providing programs for educationally handicapped children. The Court found that the entire property continued to be exempt after the leasing, in spite of the fact that the convent made a profit from the leasing. The primary use of the leased property, while yielding incidental income, was to serve a tax-exempt purpose, and therefore, the leasing was not done with a view to profit. *Id.* at 336.

Unlike Children's Development Center, Trinity is renting to a profit-making corporation. Children's does not provide religious instruction and it cannot be characterized as a charitable organization. Children's is not serving a tax-exempt purpose. Based on the evidence and testimony presented at the hearing, I am unable to conclude that Trinity's \$5,000 yearly profit from allowing Children's to use space in the

basement is “incidental” to Trinity’s operations and that the rental is not done with a view toward profit.

WHEREFORE, for the reasons stated above, I recommend that the subject property, excluding 14.8% of the building and 1.8% of the site area, used by Children’s Meadow Day Care Center as a day care center and playground, respectively, be granted an exemption from property taxes for 100% of the 1999 tax year.

October 15, 2001

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Kenneth J. Galvin  
Administrative Law Judge